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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

LYNDA MARIE GRUZD
81 Trofello Lane
Aliso Viejo, CA 92656

Respiratory Care Practitioner
License No. 4790

Respondent.

Case No. R-2011

**PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 21, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 4790 to LYNDA MARIE GRUZD (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

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3. In a disciplinary action entitled "In the Matter of the Accusation Against: Lynda M. Gruzd," Case No. R-1747, the Respiratory Care Board issued a decision effective December 2, 2003, in which Respondent's Respiratory Care Practitioner License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500)

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1 8. California Code of Regulations, title 16, section 1399.370, states, in
2 pertinent part:

3 "For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of a
5 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 "(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
10 the violation of or conspiring to violate any provision or term of the Act. . . . "

11 **COST RECOVERY**

12 9. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

13 "In any order issued in resolution of a disciplinary proceeding before the board,
14 the board or the administrative law judge may direct any practitioner or applicant found
15 to have committed a violation or violations of law to pay to the board a sum not to
16 exceed the costs of the investigation and prosecution of the case. . . ."

17 10. Section 3753.7 of the Code states:

18 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
19 include attorney general or other prosecuting attorney fees, expert witness fees, and
20 other administrative, filing, and service fees."

21 11. Section 3753.1 of the Code states, in pertinent part:

22 "(a) An administrative disciplinary decision imposing terms of probation may include,
23 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
24 monitoring the probation."

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28 **FIRST CAUSE TO REVOKE PROBATION**

(Biological Fluid Testing)

12. At all times after the effective date of Respondent's probation, Condition 3 stated:

"Respondent, at her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

"At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances.

"If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

"Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license."

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13. Respondent's probation is subject to revocation because she failed to

1 comply with Probation Condition 3, referenced above. The facts and circumstances regarding this
2 violation are as follows: Respondent failed to provide urine specimens for testing and analysis on
3 the following dates: April 24, 2004, May 17, 2004, September 24, 2004, January 11, 2005,
4 February 24, 2005, April 25, 2005, June 15¹ and June 30, 2005, September 9, 2005², November
5 17, 2005, and December 1, 2005.

6 **SECOND CAUSE TO REVOKE PROBATION**

7 (Abstention from Use of Mood Altering Substances)

8 14. At all times after the effective date of Respondent's probation, Condition 4
9 stated:

10 "Respondent shall completely abstain from the possession or use of alcohol,
11 any and all other mood altering drugs, substances and their associated
12 paraphernalia, except when the drugs are lawfully prescribed by a licensed
13 practitioner as part of a documented medical treatment.

14 "Respondent shall execute a release authorizing the release of pharmacy
15 and prescribing records as well as physical and mental health medical records.
16 Respondent shall also provide information of treating physicians, counselors or any
17 other treating professional as requested by the Board.

18 "Respondent shall ensure that she is not in the presence of or in the same
19 physical location as individuals who are using illegal substances, even if
20 Respondent is not personally ingesting the drug(s).

21 "Any positive result that registers over the established laboratory cutoff
22 level shall constitute a violation of probation and shall result in the filing of an
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25 1. On or about June 15, 2005, Respondent called her probation monitor stating she was
26 selected to provide a urine specimen for testing, however, she was too ill to drive herself to a
27 collection site.

28 2. On or about September 9, 2005, Respondent was selected to provide a urine specimen for
testing and analysis. Respondent called her probation monitor later that afternoon and said she
had fallen off the ladder while pruning her trees and was not able to drive herself to the collection
site as her pain medications made her drowsy.

1 accusation and/or a petition to revoke probation against Respondent's respiratory
2 care practitioner license.

3 "Respondent also understands and agrees that any positive result that
4 registers over the established laboratory cutoff level shall be reported to each of
5 Respondent's employers."

6 15. Respondent's probation is subject to revocation because she failed to
7 comply with Probation Condition 4, referenced above. The facts and circumstances regarding this
8 violation are as follows: On September 21, 2005, Respondent was selected to provide a urine
9 specimen for testing and analysis. Respondent's specimen tested positive for Ethanol at 0.11 and
10 ethylglucuronide at a level of 59,000 ng.

11 **THIRD CAUSE TO REVOKE PROBATION**

12 (Probation Monitoring Program)

13 16. At all times after the effective date of Respondent's probation, Condition 11
14 stated:

15 "Respondent shall completely comply with requirements of the Board
16 appointed probation monitoring program, and shall, upon reasonable request, report
17 to or appear to a local venue as directed.

18 "Respondent shall claim all certified mail issued by the Board, respond to
19 all notices of reasonable requests timely, and submit Annual Reports, Identification
20 Update reports or other reports similar in nature, as requested and directed by the
21 Board or its representative.

22 "Respondent is encouraged to contact the Board's Probation Program at
23 any time she has a question or concern regarding her terms and conditions of
24 probation.

25 "Failure to appear for any scheduled meeting or examination, or cooperate
26 with the requirements of the program, including timely submission of requested

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1 information, shall constitute a violation of probation and will result in the filing of an
2 accusation and/or a petition to revoke probation against Respondent's respiratory care
3 practitioner license."

4 17. Respondent's probation is subject to revocation because she failed to
5 comply with Probation Condition 11, referenced above. The facts and circumstances regarding
6 this violation are as follows: On the following dates, Respondent failed to call Compass Vision
7 telephone log system to determine if she was selected to provide a specimen for testing and
8 analysis as required by the probation monitoring program: March 31, 2004; April 27, 2004; May
9 18, 19, and 20, 2004; July 10, 11, and 18, 2004; August 17, and 18, 2004; October 16, 2004;
10 November 7 and 15, 2004; December 4, 24, and 26, 2004; January 12 and 14, 2005; February 1,
11 20, 23, 24, 25, 26, and 27, 2005; March 15, 18, 20, 21, 24, and 28, 2005; April 1, 2005; May 8,
12 2005; June 30, 2005; July 30, 2005; August 3, 6, and 31, 2005; September 2, 16, 25, 2005,
13 November 23, 24, 25, 2005, and January 9, 2006.

14 **FOURTH CAUSE TO REVOKE PROBATION**

15 (Probation Monitoring Costs)

16 18. At all times after the effective date of Respondent's probation, Condition 12
17 stated:

18 "All costs incurred for probation monitoring during the entire probation
19 shall be paid by Respondent. The monthly cost may be adjusted as expenses are
20 reduced or increased. Respondent's failure to comply with all terms and conditions
21 may also cause this amount to be increased.

22 "All payments for costs are to be sent directly to the Respiratory Care
23 Board and must be received by the date(s) specified. (Periods of tolling will not toll
24 the probation monitoring costs incurred.)

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“If Respondent is unable to submit costs for any month, she shall be required, instead to submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

“Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

“The filing of bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse the Board for costs incurred

19. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 12, referenced above. The facts and circumstances regarding this violation are as follows: Respondent failed to pay her \$150 monthly probation monitoring cost which was due on January 2, 2006, and is in arrears \$150.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. R-1747 and imposing the disciplinary order that was stayed thereby revoking Respiratory Care Practitioner License No. 4790 issued to LYNDIA MARIE GRUZD;

2. Revoking or suspending Respiratory Care Practitioner License No. 4790,
issued to LYNDA MARIE GRUZD:

3. Ordering Lynda Marie Gruzd to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

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4. Taking such other and further action as deemed necessary and proper.

DATED: January 26, 2006

Original signed by Liane Zimmerman for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant